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10/691,977	10/24/2003	Maria Skillas	SKI-001	6966
21884 7590 08/29/2007 WELSH & FLAXMAN LLC 2000 DUKE STREET, SUITE 100 ALEXANDRIA, VA 22314			EXAMINER SANDY, ROBERT JOHN	
			ART UNIT 3677	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/691,977
Filing Date: October 24, 2003
Appellant(s): SKILLAS, MARIA

MAILED

AUG 29 2007

GROUP 3600

John L. Welsh (Reg. No. 33,621)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 May 2007 appealing from the Office action mailed 24 October 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Des. 337,667	Lovett	7-1993
2,263,136	Knouse et al.	11-1941
5,044,083	DeCarolis et al.	9-1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lovett (U.S. Design Patent 337,667). Lovett discloses an appliance having an ergonomic handle comprising a first handle (Fig. 4, top portion extending left to right) having a first longitudinal axis, first (upper left side in figure 4) and second (upper right portion in figure 4) ends, and upper and lower surfaces. Lovett also discloses a second handle member (vertical portion between mixer body and horizontal handle member) with first (lower portion connected to mixer body) and second (upper portion connected to horizontal handle) ends. The first handle member (horizontal) and second handle member (vertical) are connected such that their respective longitudinal axes are approximately perpendicular. The first end of the first handle member is connected to the second end of the second handle member (see upper left side of figure 4). The first end of the second handle member (vertical member) is connected directly to the appliance. The second end of the first handle member is free and unconnected to the appliance. The first end of the second (vertical) handle of Lovett is connected to an appliance where the

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appliance extends downwardly therefrom along the second longitudinal axis of the second handle member.

3. With respect to claims 2 and 3, Lovett discloses the first handle (horizontal) member oriented for horizontal gripping and the second handle member (vertical) is oriented for vertical gripping.
4. With respect to claim 12, Lovett discloses the appliance to be a hand held mixer.

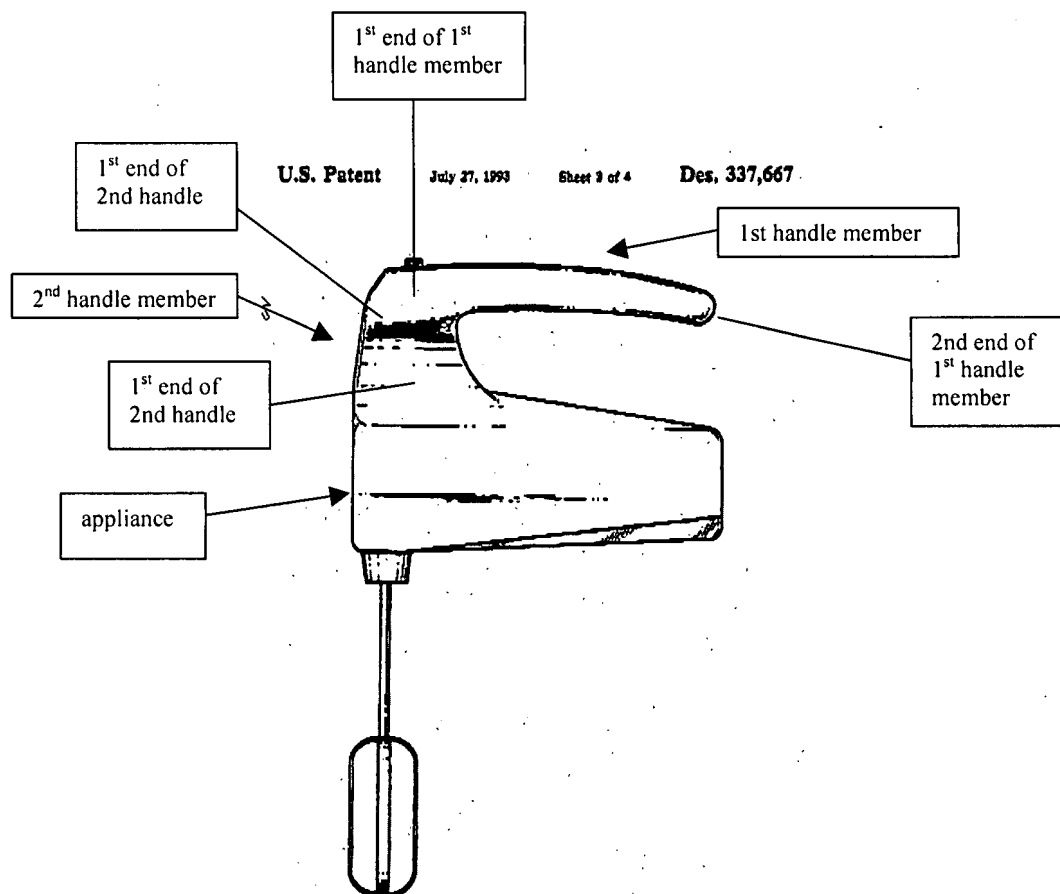


FIG. 4

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 7, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovett in view of Knouse et al (U.S. Patent No. 2,263,136). Lovett fails to disclose or show portions of reduced diameter, a swivel member, or positioning projection.

7. With respect to claim 5, Knouse discloses the first end (near "D") of the first handle member (10) to have reduced diameter compared to a central portion of the first handle member. The first end of the first handle member is shaped to accommodate the palm and fingers of a user.

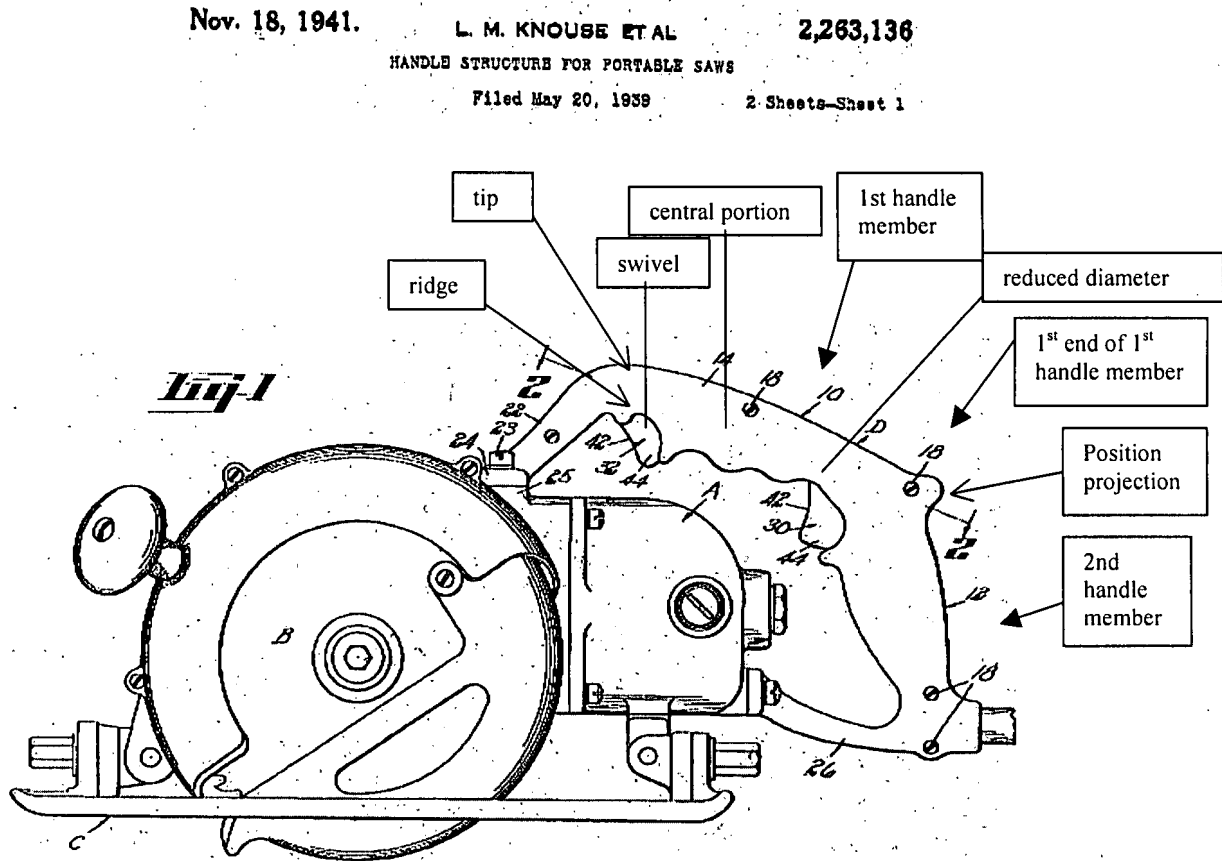
8. With respect to claims 7 and 8, Knouse discloses the second end (near 22) of the first handle member (10) to include a swivel member (protrusions around 32) for positioning of a thumb thereon. A far end of the swivel member includes a ridge (left of 32) to aid a user in positioning a hand thereon.

9. With respect to claim 11, Knouse discloses a positioning projection (near 18, diagonally opposite of 30) at a connection between the first handle (10) and second handle (12). Each of these features is used to help the user position their hand on the grip and maintain a firm and comfortable grip.

Therefore, in view of the above features, it would have been obvious to one having ordinary skill in the art to modify the handle of Lovett to include the features of Knouse to provide a firm, ergonomic, and comfortable grip. A user of Knouse's grip and

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Lovett's grip will both be required to maintain a grip on the appliance through a range of motion and at different angles.



10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lovett in view of Knouse as applied to claim 5 above, and further in view of DeCarolis et al ("DeCarolis", U.S. Patent No. 5,044,083). Neither Lovett nor Knouse provide an indentation to receive a thumb of a user on the upper surface of the first handle member. Knouse shows an indentation only on the lower surface. DeCarolis teaches a handle with first and second portions, where the first portion (vertical part 10) includes an indentation at a first end (near junction with 17, at top portion) capable of receiving a thumb. Such a

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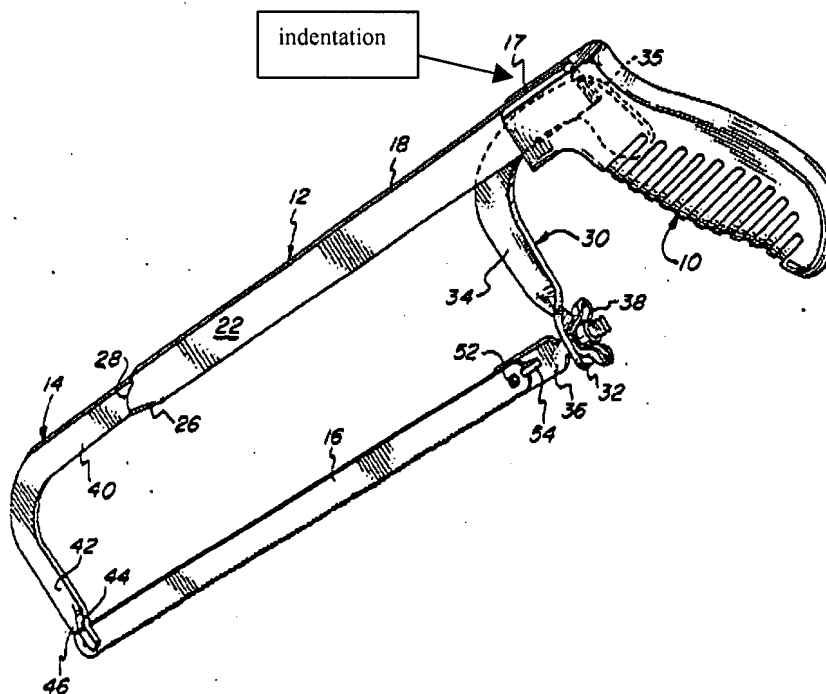
feature provides a comfortable grip to the user. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lovett and Knouse as taught by DeCarolis to provide a comfortable grip to the user.

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Sep. 3, 1991

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5,044,083

FIG. 1**(10) Response to Argument**

Applicant's argument I, from page 9 of the filed Brief, regarding the discussion that claims 1-3 and 12 are not anticipated under 35 U.S.C. § 102(b) based upon the disclosure of Lovett, where it has been argued that Lovett: 1) fails to show a second handle; 2) a user would be hard pressed to vertically grip this portion of the mixer as called for in claim 3 and use it as a handle when mixing; and 3) the portion of Lovett

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above the beaters is not intended to be gripped as a handle and in fact would be difficult or near impossible to be gripped by the hand of an average sized person” because “[t]his portion is rectangular in cross-section and would be uncomfortable for one to try and wrap their hand about and use as a handle during the process of mixing”; each have been fully considered but they are not persuasive.

Applicant’s arguments appear to summarily pertain to be concerned that the surfaces of the handle structure of Lovett cannot be gripped by a user’s hand and/or fingers. There is nothing in Lovett handle structure that would prevent a user from gripping that handle anywhere along its exterior surface since its exterior surface is clearly accessible by at least one’s fingers, in order to grip the handle in any fashion one may desire. It is clear in Lovett’s figures that the handle structure is able to be gripped and handled, and the mixer operated by grasping at least onto the vertical section shown.

Applicant's argument II, starting from page 9 of the filed Brief, regarding the discussion(s) that claims 5, 7, 8 and 11 are patentable over Lovett in view of Knouse et al., has been fully considered but they are not persuasive.

Concerning Applicant’s arguments to claim 5, summararily that “the Office Action fails to provide any motivation for combining it with the mixer of Lovett in rejecting claim 5”, and “if Lovett and Knouse et al. were combined, there is no teaching as to how the end result would be a reduced diameter at the location claimed”, is not found persuasive. The Office action has provided rationale for the obviousness, where stated that “it would have been obvious to one having ordinary skill in the art to modify the handle of Lovett to include the features of Knouse to provide a firm, ergonomic, and

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comfortable grip. A user of Knouse's grip and Lovett's grip will both be required to maintain a grip on the appliance through a range of motion and at different angles." Furthermore, since Lovett and Knouse each teach hand-held and hand operated devices requiring an operator to grip the handle of the device, and such that Knouse teaches ergonomic handle structure, incorporating features of Knouse's handle structure into that of Lovett's would have provided a predictable result of the hand mixer having a firm, ergonomic, and comfortable grip.

Concerning Applicant's arguments to claim 7, summararily that Knouse et al. fails to show the swivel member as claimed, and that "Swivel generally means that the structure moves and the protrusions in Knouse et al. don't appear to move." It is noted that applicant's remark of the swivel member having the feature to move, is not recited in the rejected claim 7. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Concerning Applicant's arguments to claim 8, summararily that Knouse et al. fails to show "that the far end of the swivel member includes a ridge aiding a user in positioning a hand thereon by providing the user with a ready indicator as to a tip of the first handle member" and "the function of providing an indicator as to the tip of the first handle is not performed, and cannot be performed by the ridge (left of 32), as it is not located at the end of the handle in Knouse", is not found persuasive. Knouse meets the claimed limitations since applicant relies on the intended functional claim language that the ridge is for "aiding a user in positioning a hand thereon by providing the user with a ready indicator as to a tip of the first handle member", since this functional language is

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not representative of any specific structure of the claimed device, other than a nominal recitation of "a swivel". In Knouse, since the "swivel" structure indicated in the rejection can be clearly viewed and touched by an operator's hand and/or fingers, one of ordinary skill in the art would have recognized the predictable result of the Knouse's "swivel" performing as a ready indicator as to a tip of the first handle member.

Concerning Applicant's arguments to claim 11, summararily that the "projection near 18 in Knouse et al. is not disclosed as being for the purpose of positioning", and that "there would be no reason to place a positioning projection on Lovett", is not found persuasive. As stated in the standing rejection, it would have been obvious to one having ordinary skill in the art to modify the handle of Lovett to include the features of Knouse to provide a firm, ergonomic, and comfortable grip. A user of Knouse's grip and Lovett's grip will both be required to maintain a grip on the appliance through a range of motion and at different angles. Furthermore, since Lovett and Knouse each teach hand-held and hand operated devices requiring an operator to grip the handle of the device, and such that Knouse teaches ergonomic handle structure, incorporating features of Knouse's handle structure into that of Lovett's would have provided a predictable result of the hand mixer having a firm, ergonomic, and comfortable grip in order to maintain a grip on the appliance through a range of motion and at different angles.

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Applicant's argument III, starting from page 13 of the filed Brief, regarding the discussion that claim 6 is patentable over Lovett in view of Knouse et al. and DeCarolis et al., has been fully considered but they are not persuasive. Applicant's argument summararily concerns that DeCarolis et al. fail to show an indentation as claimed. The claim merely state a nominal recitation of "the first end of the first handle member further includes an indentation shaped and dimensioned for receipt by a thumb of a user on the upper surface thereof", which the indentation indicated in that DeCarolis et al. is capable of meeting the intended function of receiving a thumb of a user. Furthermore, since the indentation of the DeCarolis et al. device is clearly accessible and able to be touch by an operator's thumb, one of ordinary skill in the art would have recognized the predictable result of the indentation of the DeCarolis et al. device in functioning as a thumb rest as an additional gripping surface to the user.

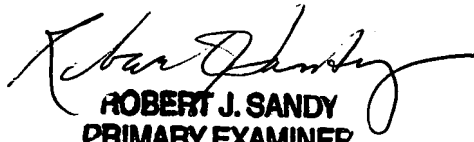
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

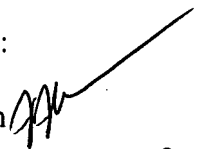
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robert J. Sandy


ROBERT J. SANDY
PRIMARY EXAMINER

Conferees:

J.J. Swann 

Meredith C. Petravick 